

April 19, 2017

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
Office of Complaints Examination and Legal Administration
999 E Street, NW
Washington, DC 20463

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Re: MURs 7229 & 7138

Dear Ms. Stevenson:

On behalf of Senate Majority PAC and Rebecca Lambe, in her official capacity as Treasurer ("Respondents"), we write in response to the correspondence submitted by Mr. Alan Grayson in support of Matter Under Review 7138, a Complaint filed by the Foundation for Accountability and Civic Trust ("FACT") on September 20, 2016. Mr. Grayson's correspondence should not be viewed as a separate complaint, but rather an endorsement of FACT's original false and unsubstantiated allegation. Senate Majority PAC refuted that Complaint in correspondence dated November 14, 2016, clearly establishing that FACT failed to provide any facts showing that coordination occurred. The response by Senate Majority PAC to the underlying Complaint is attached for your record. To the extent the Commission views Mr. Grayson's correspondence as a separate Complaint, the November 14, 2016, correspondence should be incorporated by reference into this response.

Mr. Grayson's correspondence does not add a scintilla of evidence to FACT's false and unsubstantiated allegation. Decisions about the geographic distribution of a communication that arise from publicly available information cannot, as a matter of law, satisfy the conduct prong of the Commission's coordination test.¹ In addition, nothing in Mr. Grayson's correspondence or the underlying Complaint establishes that the distribution of Respondents' communications was coordinated in any way with Friends of Patrick Murphy. The Commission has repeatedly rejected drawing inferences of coordination "without specific evidence of prior coordination."² It should be of no surprise that candidate committees and independent spenders focus their campaign activities in media markets that are widely known to be significant. Like "temporal

¹ *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) ("a request that is posted on a web page that is available to the general public . . . does not trigger the conduct standard in paragraph (d)(1)); *Coordinated Communications*, 71 Fed. Reg. 33190, 33205 (June 8, 2006) ("a communication created with information found, for instance, on a candidate's or political party's Web site . . . is not a coordinated communication if that information is subsequently used in connection with a communication"); Factual and Legal Analysis, Matter Under Review 6821 (Dec. 2, 2015).

² Statement for the Record, Commissioners Mason, Smith & Toner, Matter Under Review 5369 (Aug. 15, 2003).

proximity" or "alleged thematic similarities," incidental convergence with respect to targeting does not "give rise to a reasonable inference" that the conduct standards have been satisfied.³ As Respondents did not engage in any form of coordination, the Commission should dismiss the Complaint and close the file.

Separately, the Commission must dismiss the two "Complaints" for failing to satisfy the complaint processing procedures specified in federal regulation. These rules provide critical notice and procedural safeguards to prospective respondents. In particular, Section 111.5(a) requires the Commission to "notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint" within "five (5) days after receipt." Here, despite having received Mr. Grayson's correspondence on March 15, 2017, the Commission's notification was not dated until March 31, 2017, and Respondents did not receive notice until April 7, 2017. Likewise, the original Complaint, Matter Under Review 7138, was not transmitted to Respondents until eight days after the Commission received it. For this additional reason, the Commission should dismiss the Complaints.

Very truly yours,



Ezra W. Reese
David J. Lazarus

Counsel to Respondents

³ Factual and Legal Analysis, Matter Under Review 6821 (Dec. 2, 2015); *see also* Statement of Reasons of Commissioners Petersen, Hunter & Goodman, Matter Under Review 6902 *et al.* (Dec. 17, 2015) ("OGC's analysis in MUR 6821 [] should guide the Commission").